

House Engrossed Senate Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
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CHAPTER 295

SENATE BILL 1623

AN ACT

AMENDING SECTIONS 16-550, 16-551, 16-602, 16-621 AND 16-1011, ARIZONA REVISED
STATUTES; RELATING TO ELECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 16-550, Arizona Revised Statutes, is amended to
3 read:

4 16-550. Receipt of voter's ballot

5 A. Upon receipt of the envelope containing the early ballot and the
6 completed affidavit, the county recorder or other officer in charge of
7 elections shall compare the signatures thereon with the signature of the
8 elector on his registration form. If satisfied that the signatures
9 correspond, the recorder or other officer in charge of elections shall hold
10 them unopened in accordance with the rules of the secretary of state.

11 B. The recorder or other officer in charge of elections shall
12 thereafter safely keep the affidavits and early ballots in his office until
13 delivered pursuant to section 16-551 AND TALLYING OF BALLOTS SHALL NOT BEGIN
14 ANY EARLIER THAN SEVEN DAYS BEFORE ELECTION DAY.

15 C. The county recorder shall send a list of all voters who were issued
16 early ballots to the election board of the precinct in which the voter is
17 registered.

18 Sec. 2. Section 16-551, Arizona Revised Statutes, is amended to read:

19 16-551. Early election board; classification

20 A. The board of supervisors or the governing body of the political
21 subdivision shall appoint one or more early election boards to serve at
22 places to be designated by the board of supervisors or the governing body to
23 canvass and tally early election ballots. Members of early election boards
24 shall be selected in accordance with the provisions for selecting members of
25 regular election boards as provided in section 16-531.

26 B. If an electronic voting system is in use for early voting, the
27 early election board shall consist of at least one inspector and two judges
28 who shall perform the processing requirements in accordance with the rules
29 issued by the secretary of state. The inspector and judges shall be
30 appointed in the same manner by party as provided in section 16-531.

31 C. All early ballots received by the county recorder or other officer
32 in charge of elections before 7:00 p.m. on election day and the original
33 affidavit of the voter shall be delivered to the early election boards for
34 processing as provided in the rules of the secretary of state. The office of
35 the county recorder or other officer in charge of elections shall remain open
36 until 7:00 p.m. on election day for the purpose of receiving early ballots.
37 In no event shall partial or complete tallies of the early election board be
38 released or divulged before all precincts have reported or one hour after the
39 closing of the polls on election day, whichever occurs first, AND ANY PERSON
40 WHO UNLAWFULLY RELEASES INFORMATION REGARDING VOTE TALLIES OR WHO POSSESSES A
41 TALLY SHEET OR SUMMARY WITHOUT AUTHORIZATION FROM THE RECORDER OR OFFICER IN
42 CHARGE OF ELECTIONS IS GUILTY OF A CLASS 6 FELONY.

43 D. The necessary printed blanks for poll lists, tally lists, lists of
44 voters, ballots, oaths and returns, together with envelopes in which to
45 enclose the returns, shall be furnished by the board of supervisors or the

1 governing body of the political subdivision to the early election board for
2 each election precinct at the expense of the county or the political
3 subdivision.

4 Sec. 3. Section 16-602, Arizona Revised Statutes, is amended to read:

5 16-602. Removal of ballots from ballot boxes; disposition of
6 ballots folded together or excessive ballots;
7 designated margin; hand counts; vote count
8 verification committee

9 A. The ballots cast in the election shall first be removed from the
10 ballot box and counted without being opened, except as may be necessary to
11 ascertain that the number of ballots cast corresponds with the number of
12 names on the poll lists.

13 B. If two or more ballots are found folded together appearing as a
14 single ballot, they shall be laid aside until the count of the ballots is
15 completed. If it then appears by comparison of the count with the number of
16 names on the poll lists that the ballots thus folded together were cast by
17 one elector, they shall be destroyed. If the ballots in the box are still
18 found to exceed in number the names on the poll lists, the ballots, except
19 those destroyed, shall be replaced in the box, and one of the judges, without
20 looking in the box, shall draw therefrom, one at a time, and destroy
21 unopened, a number of ballots equal to the excess, and the election board
22 shall record on the poll lists the number of ballots so destroyed and shall
23 then sign the poll list.

24 C. For each countywide primary, general and presidential preference
25 election, the county officer in charge of the election shall conduct a hand
26 count at the central counting center ~~of~~ IN THE FOLLOWING ORDER:

27 1. At least two per cent of the precincts in that county, or two
28 precincts, whichever is greater, SHALL BE SELECTED AT RANDOM FROM A POOL
29 CONSISTING OF EVERY PRECINCT IN THAT COUNTY. The county political party
30 chairman for each political party that is entitled to continued
31 representation on the state ballot or the chairman's designee shall conduct
32 the selection of the precincts to be hand counted. The precincts shall be
33 selected by lot without the use of a computer, and the order of selection by
34 the county political party chairmen shall also be by lot. The selection of
35 the precincts shall not begin until all ballots voted in the precinct polling
36 places have been delivered to the central counting center. The unofficial
37 vote totals from all precincts shall be made public before selecting the
38 precincts to be hand counted. Only the ballots cast in the polling places
39 and ballots from direct recording electronic machines shall be included in
40 the hand counts conducted pursuant to this section. Provisional ballots,
41 conditional provisional ballots and write-in votes shall not be included in
42 the hand counts and the early ballots shall be grouped separately by the
43 officer in charge of elections for purposes of a separate manual audit
44 pursuant to subsection G OF THIS SECTION.

1 2. The races to be counted ON THE BALLOTS FROM THE PRECINCTS THAT WERE
2 SELECTED PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION FOR EACH PRIMARY AND
3 GENERAL ELECTION shall include ~~at least four~~ UP TO FIVE contested races.
4 ~~and~~ AFTER THE COUNTY RECORDER OR OTHER OFFICER IN CHARGE OF ELECTIONS
5 SEPARATES THE PRIMARY BALLOTS BY POLITICAL PARTY, THE RACES TO BE COUNTED
6 shall include ~~one federal race, one statewide candidate race, one ballot~~
7 ~~measure and one legislative race on those ballots.~~ BE DETERMINED BY SELECTING
8 BY LOT WITHOUT THE USE OF A COMPUTER FROM THOSE BALLOTS AS FOLLOWS:

9 (a) FOR A GENERAL ELECTION, ONE STATEWIDE BALLOT MEASURE, UNLESS THERE
10 ARE NO MEASURES ON THE BALLOT.

11 (b) ONE CONTESTED STATEWIDE RACE FOR STATEWIDE OFFICE.

12 (c) ONE CONTESTED RACE FOR FEDERAL OFFICE, EITHER UNITED STATES SENATE
13 OR UNITED STATES HOUSE OF REPRESENTATIVES. IF THE UNITED STATES HOUSE OF
14 REPRESENTATIVES RACE IS SELECTED, THE NAMES OF THE CANDIDATES MAY VARY AMONG
15 THE SAMPLED PRECINCTS.

16 (d) ONE CONTESTED RACE FOR STATE LEGISLATIVE OFFICE, EITHER STATE
17 HOUSE OF REPRESENTATIVES OR STATE SENATE. IN EITHER CASE, THE NAMES OF THE
18 CANDIDATES MAY VARY AMONG THE SAMPLED PRECINCTS.

19 (e) IF THERE ARE FEWER THAN FOUR CONTESTED RACES RESULTING FROM THE
20 SELECTIONS MADE PURSUANT TO SUBDIVISIONS (a) THROUGH (d) AND IF THERE ARE
21 ADDITIONAL CONTESTED FEDERAL, STATEWIDE OR LEGISLATIVE RACES OR BALLOT
22 MEASURES, ADDITIONAL CONTESTED RACES SHALL BE SELECTED BY LOT NOT USING A
23 COMPUTER UNTIL FOUR RACES HAVE BEEN SELECTED OR UNTIL NO ADDITIONAL CONTESTED
24 FEDERAL, STATEWIDE OR LEGISLATIVE RACES OR BALLOT MEASURES ARE AVAILABLE FOR
25 SELECTION.

26 (f) IF THERE ARE NO CONTESTED RACES AS PRESCRIBED BY THIS PARAGRAPH, A
27 HAND COUNT SHALL NOT BE CONDUCTED FOR THAT PRECINCT FOR THAT ELECTION.

28 3. FOR THE PRESIDENTIAL PREFERENCE ELECTION, SELECT BY LOT TWO PER
29 CENT OF THE POLLING PLACES DESIGNATED AND USED PURSUANT TO SECTION 16-248 AND
30 PERFORM THE HAND COUNT OF THOSE BALLOTS.

31 4. For the purposes of this section, a write-in candidacy in a race
32 does not constitute a contested race.

33 5. In elections in which there are candidates for president, the
34 presidential race shall be added to the four categories of hand counted
35 races.

36 6. Each county chairman of a political party that is entitled to
37 continued representation on the state ballot or the chairman's designee shall
38 select by lot the individual races to be hand counted PURSUANT TO THIS
39 SECTION.

40 7. The county chairman of each political party shall designate and
41 provide the number of election board members as designated by the county
42 officer in charge of elections who shall perform the hand count under the
43 supervision of the county officer in charge of elections. For each precinct
44 that is to be audited, the county chairmen shall designate at least ~~three~~ TWO
45 board workers who are registered members of any or no political party, ~~and TO~~

1 ASSIST WITH THE AUDIT. ANY QUALIFIED ELECTOR FROM THIS STATE MAY BE A BOARD
2 WORKER WITHOUT REGARD TO PARTY DESIGNATION. The county election officer
3 shall provide for compensation for those board workers, NOT TO INCLUDE
4 TRAVEL, MEAL OR LODGING EXPENSES. ~~If the board workers selected by the~~
5 ~~county chairmen fail to appear and perform the hand count pursuant to this~~
6 ~~subsection, no hand count will be conducted and the electronic tabulation is~~
7 ~~deemed the official count.~~ IF THERE ARE LESS THAN TWO PERSONS FOR EACH
8 AUDITED PRECINCT AVAILABLE TO PARTICIPATE ON BEHALF OF EACH RECOGNIZED
9 POLITICAL PARTY, THE RECORDER OR OFFICER IN CHARGE OF ELECTIONS SHALL, WITH
10 THE APPROVAL OF AT LEAST TWO COUNTY PARTY CHAIRPERSONS IN THE COUNTY IN WHICH
11 THE SHORTFALL OCCURS, SUBSTITUTE ADDITIONAL INDIVIDUAL ELECTORS WHO ARE
12 PROVIDED BY ANY POLITICAL PARTY FROM ANYWHERE IN THE STATE WITHOUT REGARD TO
13 PARTY DESIGNATION TO CONDUCT THE HAND COUNT. A COUNTY PARTY CHAIRMAN SHALL
14 APPROVE ONLY THOSE SUBSTITUTE ELECTORS WHO ARE PROVIDED BY THE COUNTY
15 CHAIRMAN'S POLITICAL PARTY. THE POLITICAL PARTIES SHALL PROVIDE TO THE
16 RECORDER OR OFFICER IN CHARGE OF ELECTIONS IN WRITING THE NAMES OF THOSE
17 PERSONS INTENDING TO PARTICIPATE IN THE HAND COUNT AT THE AUDITED PRECINCTS
18 NOT LATER THAN 5:00 P.M. ON THE TUESDAY PRECEDING THE ELECTION. IF THE TOTAL
19 NUMBER OF BOARD WORKERS PROVIDED BY ALL PARTIES IS LESS THAN FOUR TIMES THE
20 NUMBER OF PRECINCTS TO BE AUDITED, THE RECORDER OR OFFICER IN CHARGE OF
21 ELECTIONS SHALL NOTIFY THE PARTIES OF THE SHORTAGE BY 9:00 A.M. ON THE
22 WEDNESDAY PRECEDING THE ELECTION. THE HAND COUNT SHALL NOT PROCEED UNLESS
23 THE POLITICAL PARTIES PROVIDE THE RECORDER OR OFFICER IN CHARGE OF ELECTIONS,
24 IN WRITING, A SUFFICIENT NUMBER OF PERSONS BY 5:00 P.M. ON THE THURSDAY
25 PRECEDING THE ELECTION AND A SUFFICIENT NUMBER OF PERSONS, PURSUANT TO
26 SECTION 16-602, SUBSECTION C, PARAGRAPH 7, ARRIVE TO PERFORM THE HAND COUNT.
27 THE RECORDER OR OFFICER IN CHARGE OF ELECTIONS MAY PROHIBIT PERSONS FROM
28 PARTICIPATING IN THE HAND COUNT IF THEY ARE TAKING ACTIONS TO DISRUPT THE
29 COUNT OR ARE UNABLE TO PERFORM THE DUTIES AS ASSIGNED. FOR THE HAND COUNT TO
30 PROCEED, NO MORE THAN SEVENTY-FIVE PER CENT OF THE PERSONS PERFORMING THE
31 HAND COUNT SHALL BE FROM THE SAME POLITICAL PARTY.

32 8. IF A POLITICAL PARTY IS NOT REPRESENTED BY A DESIGNATED CHAIRPERSON
33 WITHIN A COUNTY, THEN THE STATE CHAIRPERSON FOR THAT POLITICAL PARTY, OR A
34 PERSON DESIGNATED BY THE STATE CHAIRPERSON, MAY PERFORM THE ACTIONS REQUIRED
35 BY THE COUNTY CHAIRPERSON AS SPECIFIED IN THIS SECTION.

36 D. If the randomly selected races result in a difference in any race
37 that is less than the designated margin when compared to the electronic
38 tabulation of those same ballots, the results of the electronic tabulation
39 constitute the official count for that race. If the randomly selected races
40 result in a difference in any race that is equal to or greater than the
41 designated margin when compared to the electronic tabulation of those same
42 ballots, a second hand count of those same ballots and races shall be
43 performed. If the second hand count results in a difference in any race that
44 is less than the designated margin when compared to the electronic tabulation
45 for those same ballots, THE electronic tabulation constitutes the official

1 count for that race. If the second hand count results in a difference in any
2 race that is equal to or greater than the designated margin when compared to
3 the electronic tabulation for those same ballots, the hand count shall be
4 expanded to include a total of twice the original number of randomly selected
5 precincts. Those additional precincts shall be selected by lot without the
6 use of a computer.

7 E. In any expanded count of randomly selected precincts, if the
8 randomly selected precinct hand counts result in a difference in any race
9 that is equal to or greater than the designated margin when compared to the
10 electronic tabulation of those same ballots, the final hand count shall be
11 extended to include the entire jurisdiction for that race. If the
12 jurisdictional boundary for that race would include any portion of more than
13 one county, the final hand count shall not be extended into the precincts of
14 that race that are outside of the county that is conducting the expanded hand
15 count. If the expanded hand count results in a difference in that race that
16 is less than the designated margin when compared to the electronic tabulation
17 of those same ballots, the electronic tabulation constitutes the official
18 count for that race.

19 F. If a final hand count is performed for an entire jurisdiction for a
20 race, the final hand count shall be repeated for that race until a hand count
21 for that race for the entire jurisdiction results in a count that is
22 identical to one other hand count for that race for the entire jurisdiction
23 and that hand count constitutes the official count for that race.

24 G. After the electronic tabulation of early ballots and at one or more
25 times selected by the chairman of the political parties entitled to continued
26 representation on the ballot or the chairman's designee, the ~~county officer~~
27 ~~in charge of elections~~ CHAIRMEN OR THE CHAIRMEN'S DESIGNEES shall randomly
28 select one or more batches of early ballots that have been tabulated to
29 include at least one batch from each machine used for tabulating early
30 ballots and ~~shall securely sequester~~ those ballots SHALL BE SECURELY
31 SEQUESTERED BY THE COUNTY RECORDER OR OFFICER IN CHARGE OF ELECTIONS along
32 with their unofficial tally reports for a postelection manual audit. The
33 ~~county officer in charge of elections~~ CHAIRMEN OR THE CHAIRMEN'S DESIGNEES
34 shall randomly select from those sequestered early ballots a number equal to
35 one per cent of the total number of early ballots cast or five thousand early
36 ballots, whichever is less. From those randomly selected early ballots, the
37 county officer in charge of elections shall conduct a manual audit of the
38 same races that are being hand counted pursuant to subsection C OF THIS
39 SECTION. If the manual audit of the early ballots results in a difference in
40 any race that is equal to or greater than the designated margin when compared
41 to the electronically tabulated results for those same early ballots, the
42 manual audit shall be repeated for those same early ballots. If the second
43 manual audit results in a difference in that race that is equal to or greater
44 than the designated margin when compared to the electronically tabulated
45 results for those same early ballots, the manual audit shall be expanded only

1 for that race to a number of additional early ballots equal to one per cent
2 of the total early ballots cast or an additional five thousand ballots,
3 whichever is less, to be randomly selected from the batch or batches of
4 sequestered early ballots. If the expanded early ballot manual audit results
5 in a difference for that race that is equal to or greater than the designated
6 margin when compared to any of the earlier manual counts for that race, the
7 manual counts shall be repeated for that race until a manual count results in
8 a difference in that race that is less than the designated margin. If at any
9 point in the manual audit of early ballots the difference between any manual
10 count of early ballots is less than the designated margin when compared to
11 the electronic tabulation of those ballots, the electronic tabulation shall
12 be included in the canvass and no further manual audit of the early ballots
13 shall be conducted.

14 H. During any hand count of early ballots, the county officer in
15 charge of elections and election board workers shall attempt to determine the
16 intent of the voter in casting the ballot.

17 I. Notwithstanding any other law, the county officer in charge of
18 elections shall retain custody of the ballots for purposes of performing any
19 required hand counts and the officer shall provide for security for those
20 ballots.

21 J. The hand counts prescribed by this section shall begin within
22 twenty-four hours after the closing of the polls and shall be completed
23 before the canvassing of the election for that county. The results of those
24 hand counts shall be provided to the secretary of state, who shall make those
25 results publicly available on the secretary of state's web site.

26 K. For any county in which a hand count has been expanded to all
27 precincts in the jurisdiction, the secretary of state shall make available
28 the escrowed source code for that county to the superior court. The superior
29 court shall appoint a special master to review the computer software. The
30 special master shall have expertise in software engineering and shall not be
31 affiliated with an election software vendor nor with a candidate and shall
32 sign and be bound by a nondisclosure agreement regarding the source code
33 itself, and shall issue a public report to the court and to the secretary of
34 state regarding the special master's findings on the reasons for the
35 discrepancies. The secretary of state shall consider the reports for
36 purposes of reviewing the certification of that equipment and software for
37 use in this state.

38 L. The vote count verification committee is established in the office
39 of the secretary of state and all of the following apply:

40 1. At least thirty days before the 2006 primary election, the
41 secretary of state shall appoint seven persons to the committee, no more than
42 three of whom are members of the same political party.

43 2. Members of the committee shall have expertise in any two or more of
44 the areas of advanced mathematics, statistics, random selection methods,
45 systems operations or voting systems.

1 3. A person is not eligible to be a committee member if that person
2 has been affiliated with or received any income in the preceding five years
3 from any person or entity that provides election equipment or services in
4 this state.

5 4. The vote count verification committee shall meet and establish one
6 or more designated margins to be used in reviewing the hand counting of votes
7 as required pursuant to this section. The committee shall review and
8 consider revising the designated margins every two years for use in the
9 applicable elections. The committee shall provide the designated margins to
10 the secretary of state at least ten days before the primary election and at
11 least ten days before the general election, and the secretary of state shall
12 make that information publicly available on the secretary of state's web
13 site.

14 5. Members of the vote count verification committee are not eligible
15 to receive compensation but are eligible for reimbursement of expenses
16 pursuant to title 38, chapter 4, article 2. The committee is a public body
17 and its meetings are subject to title 38, chapter 3, article 3.1 and its
18 reports and records are subject to title 39, chapter 1.

19 Sec. 4. Section 16-621, Arizona Revised Statutes, is amended to read:
20 16-621. Proceedings at the counting center

21 A. All proceedings at the counting center shall be under the direction
22 of the board of supervisors or other officer in charge of elections and shall
23 be conducted in accordance with the approved instructions and procedures
24 manual provided for in section 16-452 under the observation of
25 representatives of each political party and the public, but no persons except
26 those authorized for the purpose shall touch any ballot or ballot card or
27 return. All persons who are engaged in processing and counting of the
28 ballots SHALL BE QUALIFIED ELECTORS, shall be deputized in writing and take
29 an oath that they will faithfully perform their assigned duties. There shall
30 be no preferential counting of ballots for the purpose of projecting the
31 outcome of the election. If any ballot is damaged or defective so that it
32 cannot properly be counted by the automatic tabulating equipment, a true
33 duplicate copy shall be made of the damaged ballot in the presence of
34 witnesses and substituted for the damaged ballot. All duplicate ballots
35 shall be clearly labeled "duplicate" and shall bear a serial number which
36 shall be recorded on the damaged or defective ballot.

37 B. If for any reason it becomes impracticable to count all or a part
38 of the ballots with tabulating equipment, the officer in charge of elections
39 may direct that they be counted manually, following as far as practicable the
40 provisions governing the counting of paper ballots.

41 C. FOR ANY STATEWIDE, COUNTY OR LEGISLATIVE ELECTION, THE COUNTY
42 RECORDER OR OFFICER IN CHARGE OF ELECTIONS SHALL PROVIDE FOR A LIVE VIDEO
43 RECORDING OF THE CUSTODY OF ALL BALLOTS WHILE THE BALLOTS ARE PRESENT IN A
44 TABULATION ROOM IN THE COUNTING CENTER. THE LIVE VIDEO RECORDING SHALL
45 INCLUDE DATE AND TIME INDICATORS AND SHALL BE LINKED TO THE SECRETARY OF

1 STATE'S WEBSITE. THE SECRETARY OF STATE SHALL POST LINKS TO THE VIDEO
2 COVERAGE FOR VIEWING BY THE PUBLIC. THE COUNTY RECORDER OR OFFICER IN CHARGE
3 OF ELECTIONS SHALL RECORD THE VIDEO COVERAGE OF THE BALLOTS AT THE COUNTING
4 CENTER AND SHALL RETAIN THOSE RECORDINGS AS A PUBLIC RECORD FOR AT LEAST AS
5 LONG AS THE CHALLENGE PERIOD FOR THE GENERAL ELECTION. IF THE LIVE VIDEO
6 FEED IS DISRUPTED OR DISABLED, THE RECORDER OR OFFICER IN CHARGE OF ELECTIONS
7 IS NOT LIABLE FOR THE DISRUPTION BUT SHALL ATTEMPT TO REINSTATE VIDEO
8 COVERAGE AS SOON AS IS PRACTICABLE. ANY DISRUPTION IN VIDEO COVERAGE SHALL
9 NOT AFFECT OR PREVENT THE CONTINUED TABULATION OF BALLOTS. THIS PARAGRAPH IS
10 CONTINGENT ON LEGISLATIVE APPROPRIATION.

11 Sec. 5. Section 16-1011, Arizona Revised Statutes, is amended to read:

12 16-1011. Counterfeiting election returns; classification

13 A. A person who knowingly forges or counterfeits returns of an
14 election purporting to have been held at a precinct or place where no
15 election was in fact held, or who knowingly substitutes, forges or
16 counterfeits returns of election instead of the true returns for a precinct
17 or place where an election was actually held, is guilty of a class 4- 3
18 felony.

19 B. A PERSON WHO KNOWINGLY SUBSTITUTES, FORGES, COUNTERFEITS OR TAMPERS
20 WITH BALLOT TABULATIONS OR TOTALS OR ELECTION RESULTS BY ELECTRONIC MEANS OR
21 THROUGH THE USE OF A COMPUTER, MACHINE OR OTHER DEVICE IS GUILTY OF A CLASS 3
22 FELONY. THIS SUBSECTION DOES NOT APPLY TO THE CASTING OR TALLYING OF BALLOTS
23 AS PROVIDED BY LAW OR TO THE SUBSTITUTION OR DUPLICATION OF BALLOTS AS
24 PRESCRIBED BY SECTIONS 16-573, 16-574 AND 16-621.

25 C. NOTWITHSTANDING SECTIONS 13-905, 13-906 AND 13-912, A PERSON
26 CONVICTED UNDER THIS SECTION SHALL NOT BE AUTOMATICALLY RESTORED THE RIGHT TO
27 VOTE.

APPROVED BY THE GOVERNOR JULY 2, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 2, 2007.